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STATEMENT BY MICHAEL H. SUSSMAN, ESQ. IN OPPOSITION TO LEGISLATION REMOVING RELIGIOUS EXEMPTIONS FROM STATE OF NEW YORK

For decades, New York State has recognized that people with *bona fide* religious objections need not subject their children to vaccinations. Religious exemptions are not provided only to those who belong to a recognized and organized religion. Our courts have repeatedly ruled that one need not be a member of an organized religious group to have sincerely-held religious beliefs and qualify for such exemptions.

This recognition has been memorialized in state law and regulations which cede to school districts or private schools, including religious schools, the responsibility for evaluating and granting or denying written requests for such exemptions.

Our courts have adjudicated denials of religious exemptions, determining the *bona fides* of those seeking religious exemptions. Public health authorities and legislators are not the arbiters of whether someone qualifies for a religious exemption.

New York is amongst the vast majority of states which recognize religious exemptions to vaccinations. Recent federal regulations have recognized that

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religious beliefs must be recognized and respected in implementing the Affordable Care Act.

As it has recognized religious exemptions, our state laws also contemplate appropriate responses to outbreaks of contagious disease. Specifically, our public health authorities and legislators have permitted the quarantining of infected persons and places and the exclusion of unvaccinated children with religious exemptions from their schools IF a case of such a disease is reported therein.

In short, to date, our state has successfully harmonized two important values: respecting religious exemptions from vaccinations and promoting public health.

We should not now abandon that balance and attempt to extinguish religious exemptions because there has been absolutely no demonstration that the means and measures now sanctioned by our state's laws and regulations to combat contagious diseases have failed. They have not failed.

Rather, political leaders in affected communities abjectly DID NOT utilize the techniques our laws recognize. For example, in Rockland County, the outbreak of measles commenced in late September 2018. The County Health commissioner did not quarantine the seven initially infected with the disease or the places where they resided and worked. As the measles outbreak continued, the County Health Commissioner and the County Executive did not order a quarantine. Indeed, on April 4, 2019, the Rockland County Attorney

expressly disavowed use of this technique, stating it would be too difficult to implement, though it is specifically authorized by our public health law in such a case and his remarks had no known factual basis.

Indeed, it was not until ten days ago, more than six months after the outbreak of measles in Rockland County that the County Health Commissioner finally issued an order directing those with the disease to remain at home.

Likewise, rather than focus on excluding unvaccinated children who attended schools with measles, a plainly permitted measure, Rockland County over-reached, excluding healthy children for four months from a school with NO outbreak or case and insisting that this school require those with religious exemptions to vaccinate their children or live with their exclusion from education.

In light of this highly irrational official response which adjured reliance on the means and methods set forth in New York State law to handle the outbreak, there is no current legal basis for doing away with religious exemptions. There is no showing that the means and measures contemplated by our laws are inadequate to deal with the current outbreak.

Indeed, the stampede to do away with such exemptions has no rational basis where, as here, the methods provided by state law to combat an outbreak have not been used and found wanting.

Furthermore, it would be one thing if our public health officials could conclusively demonstrate that religious exemptions are at the root of the

spread of the disease or that they tried the methods provided by our law but these failed. But advocates of ending religious exemptions cannot credibly advance these arguments. They never did what they should have done. Moreover, there is no way to rationally claim that the means and methods provided now by our state law failed when officials failed to implement those measures.

Moreover, we know that ending religious exemptions is no panacea; measles has spread amongst vaccinated populations and not spread in locations where the vaccination rate is quite low.

Religious beliefs and observance are protected by both the First Amendment and our State Constitution. A *compelling state interest* is required to overcome or burden a deeply held religious belief. In light of the failure by our elected or appointed leaders to implement the means and measures current state law provides to fight contagious disease, the State cannot show any compelling basis for rescinding religious exemptions. A state which nullifies such exemptions absent such a compelling basis subjects itself to legal challenge.

Striking the religious exemption altogether is tantamount to adopting a nuclear option where other means of warfare have not proven ineffectual. This is morally irresponsible and poor public policy, a plain indicator of the impact of public hysteria on policy-makers.

Opponents of religious exemptions have taken to trotting out intimidated religious leaders to pronounce that their religions do not oppose vaccinations. But, even if this were true, these views are not determinative as to the *bona fides* of such exemptions. Religion is an inherently personal expression and our courts have repeatedly held that religious exemptions are a matter of individual religious conviction, whether or not based upon an established religion. Moreover, the narrative that religious leaders have all renounced religious exemptions is false. Numerous religious leaders have recognized that their faiths offer a doctrinal basis for claiming religious exemption to vaccinations. This is why our state and 46 others have recognized such exemptions for decades.

It is no secret that there is a large amount of hostility in the Hudson Valley, particularly Rockland and Orange Counties, directed toward the increasing religious Jewish population. Doing away with the religious exemption will not pacify those who find this population's steep increase offensive. And, legislation which is motivated by a desire to punish insular minorities has been routinely struck down as a violation of the equal protection clause of the Fourteenth Amendment and analogous state constitutional provisions.

Here, there is no rational basis for doing away with religious exemptions in light of the failure by Rockland County leaders to combat the measles outbreak as permitted and contemplated by state law and regulation.

Moreover, the move to do so bespeaks of an irrational and indefensible attack on an insular minority.

Finally, those who support ending religious exemptions have to answer hard questions: do they favor simply banning the children of those who will not vaccinate from school? Are they willing to criminalize a person's refusal to vaccinate on religious grounds and, if so, what sanctions do they intend to impose? Are people going to be required to subject their children to every available vaccine, regardless of new studies demonstrating that some vaccines, i.e., the MMR, never have been proofed on populations? Are we going to imprison people who refuse to vaccinate? Are we going to deprive their children of an education, extinguish their parental responsibility for their children?

Those who support doing away with the religious exemption must answer these questions or they are proposing no solution at all. That there is no longer a religious exemption does not mean that those who have that exemption will suddenly vaccinate. And, if having eliminated the exemption, the State is not willing to enforce this by requiring mandatory vaccinations, then the move is exposed as nothing but an ineffectual stunt.

We cannot move down a road where we consign to state authority decisions which should be private and personal. Informed consent and religious exemption are concepts deeply rooted in our tradition for a reason:

they can be harmonized with public health concerns and they represent critical American values.

I strongly urge every legislator to vote “no” to retracting the protection state law and regulation now provide those with sincerely held religious beliefs. Succumbing to public hysteria and the media frenzy to do “more” about the current outbreak makes for very bad public policy.

Michael H. Sussman, Esq., May 2, 2019

A handwritten signature in black ink, appearing to be "Michael H. Sussman", written over a faint, circular, light-gray watermark or background mark.